

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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MICHAEL CLEMONS,

Plaintiff,

-against-

CORRECTION OFFICER FUTCH et al.

Defendants.

Index No. 07CV7200 (LAP)
(HBP)

ANSWER TO COMPLAINT

Jury Trial Demanded

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Defendant La Norris Futch s/h/a Correction Officer Futch, by his attorneys, Koehler and Isaacs LLP, respectfully alleges the following:

1. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph I of the complaint, except admits that plaintiff purports to state the names of the parties and that Correction Officer Futch, is employed by Westchester County Jail located at 10 Woods Rd., Valhalla, New York, 10595.

2. Denies the allegations set forth in paragraph II of the complaint, except admits that plaintiff was in the custody of the Westchester County Jail located at 10 Woods Rd., Valhalla, New York, 10595.

3. Denies the allegations set forth in paragraph III of the complaint.

4. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph IV of the complaint.

5. Denies the allegations set forth in paragraph V of the complaint, except admits that plaintiff purports to seek the relief as stated herein..

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph VI of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

7. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

8. Defendant has not violated any rights, privileges, or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

9. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or culpable or negligent conduct of non-parties or third parties, and was not the proximate result of any act of the defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

10. Plaintiff's claims may be barred in whole or in part by the terms of the Prisoner Litigation Reform Act.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

11. To the extent that plaintiff asserts state law claims, he has failed to comply with New York General Municipal Law §50-e.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

12. At all relevant times, defendant was justified in his actions involving plaintiff.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

13. Defendant has not violated any clearly established constitutional or statutory right of which a reasonable person should have known and, therefore, is protected by qualified immunity.

WHEREFORE, defendant requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just.

Dated: New York, New York
August 6, 2008

KOEHLER AND ISAACS, LLP
Attorneys for Defendant
61 Broadway, 25th Floor
New York, New York 10006
(917) 551 1300

By: _____/s/_____
BRAN C NOONAN, ESQ. (BN2463)

To:

By Mail

Michael Clemons

#20375

Westchester County Jail

PO Box 10

Valhalla, New York 10595

Pro Se Plaintiff

By ECF

Office of the County Attorney

148 Martine Avenue, 6th Floor

White Plains, NY 10601

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ANSWER OF CORRECTION OFFICER FUTCH

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